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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED

HARRISBURG, P

NOV 27 2002

KIM SMITH,

Plaintiff,

v.

JAMES MORGAN, et al.,

Defendants.

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Civil No. 1:01-CV-0817

(Judge William W. Caldwell)

(M.J. Malachy E. Mannion) ✓

MARY E. D'ANDREA, C

Per: 378

**CORRECTIONS DEFENDANTS' MOTION
FOR AN ENLARGEMENT OF TIME**

The Corrections Defendants, by and through their attorney, John J. Talaber, Assistant Counsel, Pennsylvania Department of Corrections, pursuant to Fed.R.Civ.P. 6(b) respectfully requests this Honorable Court to grant an enlargement of time until Friday, December 6, 2002, to respond to Plaintiff's Motion to Compel (doc. 92) and Motion for a Temporary Restraining Order (doc. 93). The following averments are made in support of this Motion:

Parties and Nature of Action:

1. Plaintiff Kim Smith is an inmate currently incarcerated at the State Correctional Institution at Coal Township ("SCI-Coal Township"). See Amended Complaint (doc. 20), p. 12.

2. The Department of Corrections Defendants (“Corrections Defendants”) include: (1) Kathy Allen; (2) Nancy Ambrose; (3) Mary Bernas; (4) Sharon Burks; (5) Kandis Dascani; (6) John Dunn; (7) Harry Ersek; (8) Frank Gillis; (9) Robert Glenny; (10) Robert Gooler; (11) Dr. Robyn Johns; (12) Roy Johnson; (13) Tim Jordan; (14) Bernon Lane; (15) John Learn; (16) Edward Mason; (17) Miller; (18) James Morgan; (19) Wilma Sewell; (20) Raymond Smith; (21) David Varano; (22) Voeckler; (23) George Weaver; (24) Lynn Wolfgang; (25) Gerald Whyson; (26) Pat Yarger; (27) Angela Zimmerman; and (28) Hazel Zimmerman. See Amended Complaint, pp. 1-16.
3. Smith also names as Defendants Wexford Health Services, Inc. and Dr. Ronald Long, who are represented by James D. Young, Esquire. See Entry of Appearance (doc. 28).
4. In this 42 U.S.C. §1983 action, Smith alleges that the Corrections Defendants violated his First, Eighth, and Fourteenth Amendment rights under the United States Constitution. See Amended Complaint, pp. 1-16.
5. Smith is suing the Corrections Defendants in their individual capacities. See Amended Complaint, p.8.
6. Smith seeks injunctive relief, as well as, compensatory and punitive damages. See Amended Complaint, pp. 1-16.

Relevant Procedural History:

7. Smith initiated this action with the filing of a Complaint and an Application for In Forma Pauperis status on May 10, 2001. See Complaint (doc. 1); Application to proceed IFP (doc. 2).
8. The Court, by Order dated June 6, 2001, directed Smith to file an Amended Complaint on or before July 6, 2001. See Order (doc. 8).
9. On July 11, 2001, Smith filed an Amended Complaint. See Amended Complaint (doc. 20).
10. On August 3, 2001, the Court found that Smith's Amended Complaint substantially complied with its previous orders, and directed the Clerk of Court to serve process on the Defendants. See Order (doc. 24).
11. On or about September 26, 2001, the undersigned attorney waived service of summons for the Corrections Defendants.
12. On November 6, 2001, the Corrections Defendants waived their right to reply to Smith's Amended Complaint pursuant to 42 U.S.C. §1997(e). See Waiver of Reply (doc. 33).
13. On October 24, 2002, the Court granted the Defendants' Motion for discovery and dispositive motion deadlines; specifically, the Court directed that discovery be completed on or before November 12, 2002, and dispositive motions filed by December 13, 2002. (doc. 89)

14. On November 5, 2002, Smith filed a Motion to Compel Discovery and a Motion for a Temporary Restraining Order with a supporting Brief. (docs. 92-94). Smith did not file a supporting brief to his Motion to Compel Discovery.
15. The Corrections Defendants responses to the aforementioned Motions are now due.

Motion for Enlargement of Time:

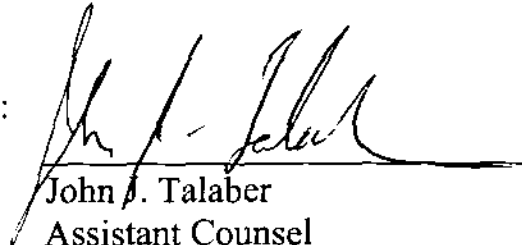
16. The Corrections Defendants, by and through their undersigned attorney, respectfully request an enlargement of time until Friday, December 6, 2002, to file their Brief in Opposition to Smith's Motion to Compel and Motion for a Temporary Restraining Order.
17. Federal Rule of Civil Procedure 6(b) provides, in part, that "[w]hen by these rules . . . an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion . . . order the period enlarged if request therefore is made before the expiration of the period originally prescribed"
18. The Corrections Defendants request an enlargement of time is necessary so that declarations can be drafted, reviewed, and signed by relevant agents of the Department that are related to claims Smith makes involving his Motion to Compel and Motion for a Temporary Restraining Order.

19. The undersigned attorney believes that this information can be obtained and filed on or before December 6, 2002, while still meeting the Court's dispositive motion deadline of December 13, 2002.
20. Once again, even based on the facts as alleged in Mr. Smith's numerous court filings presented to this Honorable Court, it is clear that he is receiving medical treatment for his various conditions from numerous physicians, and that this dispute is really a difference of opinion as to the appropriateness of the treatment provided. Further, Smith has been provided a reasonable time period to inspect and examine the documentation requested, as well as, alternative means of obtaining copies of the material at his expense; accordingly, the harm to Smith in granting this Motion for an Enlargement of Time is minimal.

WHEREFORE, for the reasons set forth above, the Corrections Defendants respectfully request this Honorable Court to grant them an Enlargement of Time until Friday, December 6, 2002, to respond to Smith's Motion to Compel and Motion for a Temporary Restraining Order.

Respectfully submitted,
Office of General Counsel

BY:

A handwritten signature in black ink, appearing to read "John J. Talaber", is written over a horizontal line.

John J. Talaber
Assistant Counsel
Pa. Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
Attorney No. 83279

Dated: November 27, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KIM SMITH,	:
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Plaintiff,	:
	: Civil No. 1:01-0817
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v.	: (Judge William W. Caldwell)
	:
JAMES MORGAN, et al.,	: (Magistrate Judge Malachy E. Mannion)
	:
Defendants.	:

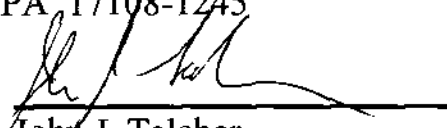
CERTIFICATE OF SERVICE

I undersigned hereby certify that a copy of the Corrections Defendants' Motion for an Enlargement of Time was served upon the person(s) in the manner indicated below.

Service by first-class mail
addressed as follows:

Kim Smith, CT-2162
SCI-Coal Township
1 Kelley Drive
Coal Township, PA 17866-1020

James D. Young, Esquire
Lavery, Faherty, Young and Patterson, P.C.
301 Market Street
P.O. Box 1245
Harrisburg, PA 17108-1245


John J. Talaber
Assistant Counsel

PA Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
Dated: November 27, 2002